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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

LOUJAIN HATHLOUL ALHATHLOUL,

Civil No. 3:21-cv-01787-IM

Plaintiff,

v.

DARKMATTER GROUP,
MARC BAIER,
RYAN ADAMS, and
DANIEL GERICKE

**MOTION TO STAY BRIEFING ON
DEFENDANTS' FORTHCOMING
MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT
PENDING THE *EN BANC* NINTH
CIRCUIT'S DECISION IN *BRISKIN V.
SHOPIFY, INC.***

Defendants.

LOCAL RULE 7-1 CERTIFICATION

Undersigned counsel certifies that counsel for Plaintiff conferred with counsel for Defendant DarkMatter Group ("DarkMatter") and counsel for the individual Defendants, and the parties were not able to reach agreement. DarkMatter and individual Defendants did not agree to a stay of the forthcoming briefing on Defendants' renewed motions to dismiss pending the *en banc* Ninth Circuit's decision in *Briskin v. Shopify, Inc.* unless Plaintiff waived the possibility of additional jurisdictional discovery in light of that decision.

MOTION

Plaintiff requests that the Court stay the forthcoming briefing on Defendants' motion to dismiss pending the Ninth Circuit's *en banc* decision in *Briskin v. Shopify, Inc.*

Since the Court granted Plaintiff's Motion for Limited Jurisdictional Discovery on February 8, 2024 (ECF 76) and ruled on Plaintiff's Motion to Compel on July 17, 2024 (ECF 113), the parties have worked collaboratively to conduct jurisdictional discovery in this matter. The parties have now completed the second day of depositions for all four deponents, thus

concluding the limited jurisdictional discovery granted to assess the nature and extent of Defendants’ contacts with the United States, which, as the Court previously indicated, would have been governed by the parameters set forth in the Ninth Circuit panel’s decision in *Briskin v. Shopify, Inc.*, 87 F.4th 404 (9th Cir. 2023), *reh’g en banc granted, opinion vacated*, 101 F.4th 706 (9th Cir. 2024).

On November 28, 2023, one month after the parties briefed Defendants’ motion to dismiss Plaintiff’s First Amended Complaint, the Ninth Circuit issued its decision in *Briskin v. Shopify, Inc.*, 87 F.4th 404 (9th Cir. 2023), *reh’g en banc granted, opinion vacated*, 101 F.4th 706 (9th Cir. 2024). When granting Plaintiff’s Motion for Limited Jurisdictional Discovery, this Court noted that the *Briskin* decision was “perhaps the first federal appellate opinion in this country addressing ‘the personal jurisdiction inquiry in cases . . . based on the extraction of . . . data’” and permitted Plaintiff to proceed with jurisdictional discovery concerning “facts relevant to the purposeful direction framework outlined in *Briskin*.” ECF 80 at 1, 7. Like the present case, *Briskin* featured allegations of internet-related conduct, including the extraction and retention of data. The Court thereby recognized that it is important that the parties “establish a concrete record in accord with *Briskin*’s reasoning.” ECF 80 at 7 (citing *Doe v. WebGroup Czech Republic, A.S.*, 89 F.4th 1188, 1204–05 (9th Cir. 2024) (Lee, J., concurring); *Good Job Games Bilism Yazilim Ve Pazarlama A.S. v. SayGames, LLC*, No. 20-16123, 2021 WL 5861279, at *1 (9th Cir. Dec. 10, 2021)).

On May 14, 2024, the Ninth Circuit granted a rehearing *en banc* in the *Briskin* case and vacated the panel’s decision. *Briskin v. Shopify, Inc.*, 101 F.4th 706 (9th Cir. 2024). The *en banc* Ninth Circuit heard arguments in *Briskin* on September 26, 2024, expressing doubts about whether the panel was correct in affirming the lower court’s dismissal of the claims against

Shopify on personal jurisdiction grounds. Rachel Scharf, *En Banc 9th Cir. Doubts Dismissal of Shopify Privacy Suit*, LAW360 (Sept. 26, 2024), <https://www.law360.com/articles/1883149/en-banc-9th-circ-doubts-dismissal-of-shopify-privacy-suit>.

The forthcoming opinion from the *en banc* Ninth Circuit in *Briskin* is expected to clarify the appropriate rule or standard that should govern the evaluation of specific personal jurisdiction over a defendant for a claim arising out of conduct on the internet. The outcome in the *en banc* case will bear on the proper method for evaluating whether the Court has personal jurisdiction over the Defendants in the present case.

This request will not prejudice any of the parties, and it is made in good faith and not for purposes of delay.

WHEREFORE, Plaintiff respectfully requests that the Court stay briefing on Defendants' forthcoming motion to dismiss Plaintiff's First Amended Complaint pending a decision from the *en banc* Ninth Circuit in *Briskin*.

Dated: November 27, 2024

Respectfully submitted,

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